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APR 25 2006

In re Application of
Robert Goetze
Application No. 10/622,270
Filed: July 18, 2003
Attorney Docket No. 02037IP

OFFICE OF PETITIONS
ON PETITION

This is a decision on the petition filed February 3, 2005, under 37 CFR 1.103 for enlargement of time for response to action dated July 29, 2004, which is treated as a petition to withdraw the holding of abandonment, under 37 CFR 1.181.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a)" or (b). This is not a final agency decision.

A non-Final Office Action was mailed July 28, 2004 which set a three month shortened statutory period for reply. No response having been timely filed and no extensions of time having been filed by January 28, 2005, this application became abandoned October 29, 2004. The instant petition and this decision precede the mailing of the Notice of Abandonment.

Petitioner contends that due to military service during the periods December 1, 2003 to November 15, 2004, he was unable to file a timely response to the non-Final Office Action mailed July 28, 2004. Instead of an extension of time however, petitioner filed a petition to enlarge the time for response. Petitioner is advised that a more appropriate response should have been a petition to suspend actions on this matter, prior to mobilization not after petitioner returned from active duty service.

Because an extension of time was not filed prior to the end of the period set out in 37 CFR 1.136, this application became abandoned.

Furthermore, the laws cited, Service Members' Relief Act and the Veteran's

Reemployment Rights Act, are laws that preserve civil obligations that are personal in nature to the service member and are not identical to the situation petitioner presents. Petitioner was both a service member and a self employed attorney however, the protections provided in the two cited laws were never intended to relieve the private attorney from service to his client or the filing of response due.

Petitioner had an obligation to either transfer cases he may have been working on prior to mobilization to other counsel or to have petitioned for an enlargement of time or suspension of the application prior to the date a response would have become due.

As for the response filed February 3, 2005, the petition notes a certificate of mail date of January 31, 2005. Had the response/petition been filed January 28, 2005, perhaps the response/petition could have been treated as a request for a three month extension of time.¹

While this matter was inappropriately filed under 37 CFR 1.103 and while petitioner has not satisfied the requirements under 37 CFR 1.181, this application will remain in an abandoned status.

Petitioner may wish to file a petition to revive under 37 CFR 1.137(a) or (b). Section 1.137(b) now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee as set forth in 37 CFR 1.17(m) (\$675.00);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

¹ Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment.

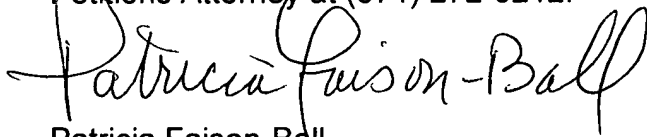
The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned
Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial "P".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions